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Kevin L. Smith

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ATTORNEYS FOR APPELLEE:

STEVE CARTER
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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 41A04-0712-CR-679

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Kim Van Valer, Judge
Cause No. 41D03-0701-FD-21, 41D02-0508-FD-215, and 41D03-0507-CM-805

KIRSCH, Judge

Jason Aliff appeals the revocation of probation contending that the trial court abused its discretion in revoking probation for a minor infraction (consumption of alcohol), that it failed to give him the proper amount of credit time, and that his sentence was inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

In March 2007, Aliff pled guilty to trespass, as a Class A misdemeanor;¹ battery resulting in bodily injury, as a Class A misdemeanor;² resisting law enforcement, as a Class A misdemeanor;³ domestic battery, as a Class D felony;⁴ and residential entry, as a Class D felony.⁵ He was sentenced to 545 days on the domestic battery count with 180 days to be spent on inactive probation to be served on home detention and the balance of the time on active probation. He was committed to the Johnson County Work Release Center for 545 days for the residential entry count to be served consecutive to the domestic battery count. Finally, he was sentenced to concurrent sentences of 365 days on each of the three misdemeanor counts suspended to active probation to be served consecutive to the sentences on the two felony counts.

¹ Ind. Code § 35-3-2-2.

² Ind. Code § 35-42-2-2.

³ Ind. Code § 35-44-3-3.

⁴Ind. Code § 35-42-2-1.3.

⁵ Ind. Code §35-43-2-1.5.

In September 2007, Aliff admitted to violating the terms of his sentences by testing positive for alcohol while in the Johnson County Work Release Center. The trial court found that Aliff violated his probation, revoked his placement in work release and ordered the balance of his sentence (1,131 days) to be executed.

DISCUSSION AND DECISION

I. Credit Time

Aliff contends that the trial court erred in denying him credit time for the time he spent confined awaiting hearing on the revocation of his probation. The determination of a defendant's pre-trial credit depends on (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed. *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*. A defendant is not entitled to credit for time served "on wholly unrelated offenses." *James v. State*, 872 N.E.2d 669, 672 (Ind. Ct. App. 2007). Here, prior to the filing of the petition to revoke probation, Aliff was arrested and confined on three new charges — rape, criminal deviate conduct and domestic battery. The State contends that Aliff's confinement was for such charges and not on the probation revocation. Aliff has failed to present any record showing that he was entitled to credit time for this period of confinement or that the trial court erred in its determination that he was not entitled to such credit. Accordingly, Aliff has waived the issue. *See Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002).

II. Revocation of Probation

Aliff also contends that the trial court abused its discretion in revoking his probation for consuming a minor amount of alcohol. We review a trial court's sentencing decision in probation revocation proceedings for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

As we have noted on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Strowmatt v. State*, 779 N.E.2d 971, 976 (Ind. Ct. App. 2002); *Davis v. State*, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), *trans. denied*.

Here, Aliff's conditions of probation stated that he shall “not consume or possess any intoxicating beverages . . . at any time.” Aliff acknowledged such conditions, and he admitted violating those conditions by consuming alcohol. While on appeal Aliff argues that he was not intoxicated; intoxication was not a condition of Aliff's probation or the standard for determining whether he breached it. The condition was clear. Aliff breached the condition. The trial court was within its discretion in revoking his probation.

III. Appropriateness of Sentence

Finally, Aliff contends that his original sentence is inappropriate under Ind. App. Rule 7(B). In *Schlichter v. State*, 779 N.E.2d 1155 (Ind. 2002), the defendant challenged the propriety of the trial court's imposition of consecutive sentences. But the defendant raised that issue for the first time in a direct appeal from his probation revocation, more than four

years after the imposition of his sentence. Our supreme court held that a defendant may not collaterally challenge his sentence on an appeal from his probation revocation. *Id.* at 1156. “When reviewing a trial court’s decision to order a defendant’s previously suspended sentence to be executed after revoking probation, we will not review the propriety of an original sentence.” *Johnson v. State*, 692 N.E.2d 485, 488 (Ind. Ct. App. 1998). So, too, here. Aliff may not challenge his sentence on an appeal from his probation revocation.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.